



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2015-0894]**

**RIN 1625-AA00**

**Safety Zone; Mississippi River between Mile 488.0 and 480.5; Lake Providence, LA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing an emergency temporary safety zone for all waters of the Lower Mississippi River between mile 488.0 and 480.5. Transit into and through this area is prohibited beginning at 5:43 p.m. on September 9, 2015 and will continue through October 31, 2015 or until the width and depth of the navigational channel improves. This safety zone is needed to protect persons, property and infrastructure from the safety hazards associated with the navigational channel being reduced in width and depth due to shallow water and shifting shoals. This has created an especially hazardous

situation that does not allow for normal transit through this reach of the river. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on October 31, 2015. For purposes of enforcement, actual notice will be used from 5:43 p.m. on September 9, 2015 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2015-0894]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LT Tyrone L. Conner, U.S. Coast

Guard; telephone 901-521-4825, e-mail

Tyrone.L.Conner@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl F.

Collins, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

Table of Acronyms

APA	Administrative Procedures Act
BNM	Broadcast Notice to Mariners
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LMN	Local Notice to Mariners
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. On September 9, 2015,

the Coast Guard was notified that shallow water and shifting shoals have reduced the width and depth of the navigational channel, creating an especially hazardous situation that does not allow for normal transit through this reach of the river. This safety zone may include waterways closures, navigation restrictions, and/or other requirements that are vital to maintaining safe navigation. Accordingly, the Coast Guard has determined that immediate and emergency action is necessary to restrict navigation on this stretch of the river.

Therefore, delaying the effective date for this emergency safety zone to complete the NPRM process is impracticable because we must establish this safety zone by September 9, 2015. Broadcast Notices to Mariners (BNM) and information sharing with the waterway users will update mariners of the restrictions, requirements, and enforcement times during this emergency situation.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this emergency rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated with and resulting

from the navigational channel being reduced in width and depth due to shallow water and shifting shoals. This situation has created an especially hazardous situation that does not allow for normal transit through this reach of the river. Accordingly, the Coast Guard has determined that immediate and emergency action is necessary to restrict navigation on this stretch of the river.

#### B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define safety zones.

The purpose of this emergency safety zone is to protect life and property from safety hazards associated with the navigational channel being reduced in width and depth due to shallow water and shifting shoals. This situation poses significant safety hazards to vessels and mariners operating in the area. Establishing a safety zone that may include waterways closures, navigation restrictions, and/or other requirements that extends from mile 488.0 to mile 480.5 on Mississippi River is necessary for the Coast Guard to maintain navigational safety.

#### C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary emergency safety zone for all vessel traffic on the Mississippi River between mile 488.0 and mile 480.5, extending the entire width of the Mississippi River. Transit into and through this area is prohibited beginning at 5:43 p.m. on September 9, 2015 and will continue through October 31, 2015 or until navigational channel width and depth is improved and response efforts are complete. Deviation from this emergency safety zone is prohibited unless specifically authorized by the COTP Lower Mississippi River, or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Lower Mississippi River may be contacted by telephone at 1-901-521-4822 or can be reached by VHF-FM channel 16.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule establishes a temporary emergency safety zone for vessels on all waters of the Mississippi River from mile 488.0 to mile 480.5. Notifications of enforcement times will be communicated to the marine community via BNM and through Local Notice to Mariners (LNM). The impacts on navigation will be limited to ensuring the safety of mariners and vessels associated with hazards associated with the navigational channel being reduced in width, depth and shoaling.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of

small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Mississippi River, from 5:43 p.m. September 9, 2015 to 11:59 p.m. on September 16, 2015. This emergency safety zone will not have a significant economic impact on a substantial number of small entities due to its limited scope and short duration. Additionally, requests to deviate from the rule will be considered on a case-by-case basis. Notifications to the marine community will be made through BNM, LNM, and communications with local waterway users. Notices of changes to the safety zone and effective times will also be made.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.



Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards.

Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. Because this safety zone is established in response to an emergency situation and is less than one week in duration, an environmental analysis checklist and a categorical exclusion determination are not required. Should this emergency situation require a safety zone lasting longer than one week, an environmental analysis checklist and a categorical exclusion determination will be made available as indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0894 is added to read as follows:

§ 165.T08-0894 Safety Zone; Mississippi River between mile 488.0 and 480.5, Lake Providence, LA.

(a) Location. The following area is a safety zone: all waters of the Mississippi River between mile 488.0 and mile 480.5, Lake Providence, LA, extending the entire width of the Mississippi River.

(b) Enforcement Period. This rule will be enforced from 5:43 p.m. on September 9, 2015 through 11:59 p.m. on October 31, 2015, or unless the width and depth of river

increase earlier and response efforts are complete,  
whichever occurs earlier.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative.

(2) Persons or vessels desiring to enter into or passage through the zone must request permission from the COTP Lower Mississippi River or a designated representative. They may be contacted on VHF-FM channel 16 or by telephone at 901-521-4822.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Lower Mississippi River or designated representative.

(d) Informational Broadcasts. The COTP Lower Mississippi River or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: September 9, 2015

T. J. Wendt  
Captain, U. S. Coast Guard  
Captain of the Port, Lower Mississippi River

[FR Doc. 2015-26956 Filed: 10/21/2015 08:45 am; Publication Date: 10/22/2015]